

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

SAMANTHA WILKS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-18-080-KEW
)	
BNSF RAILWAY COMPANY,)	
a corporation,)	
)	
Defendant.)	

O R D E R

This matter comes before the Court on Defendant's Eleventh Motion in Limine (Docket Entry #151). Defendant BNSF Railway Company ("BNSF") seeks to preclude Plaintiff from introducing evidence or argument on BNSF's discovery tactics and surveillance of Plaintiff. Clearly, discovery disputes, including any pretrial motions, are not the grist for jury consideration and Plaintiff does not contend otherwise.

BNSF also seeks to exclude any attack upon its decision to conduct surveillance upon Plaintiff to assess the scope of her alleged injuries. BNSF contends it made the decision to engage an investigator to perform surveillance on Plaintiff when one of her treating physicians expressed concern about her "secondary gain and shifting symptomology." BNSF also states that it has produced all surveillance videos to Plaintiff it intends to use at trial. It asks that Plaintiff not be permitted to "demonize" the practice

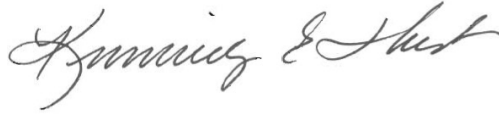
of surveillance.

For her part, Plaintiff agrees that surveillance is common in this type of litigation but argues it should be able to comment upon the surveillance conducted, including what and when activity was videoed. Plaintiff also complains of the limitations brought about by BNSF's counsel upon the examination of the investigator and his surveillance. This is the subject of a motion in limine filed by Plaintiff and will be addressed by separate Order.

This issue is not ripe for pretrial consideration since the presentation of the evidence will necessarily direct the course of the questioning and the relevancy of any attacks upon the manner in which the surveillance was accomplished. Certainly, each side may present their version of what occurred during the course of the surveillance and the resulting video will speak for itself. As for now, this portion of the motion must be denied, subject to re-urging if warranted at trial.

IT IS THEREFORE ORDERED that Defendant's Eleventh Motion in Limine (Docket Entry #151) is hereby **GRANTED**, in relation to any evidence or argument pertaining to BNSF's discovery tactics or pretrial discovery disputes. The motion is **DENIED**, as it pertains to BNSF's surveillance of Plaintiff, subject to re-urging at the appropriate time at trial.

IT IS SO ORDERED this 31st day of March, 2021.

A handwritten signature in cursive script, appearing to read "Kimberly E. West", written in black ink.

KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE